IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO 8414 of 1990
with
CIVIL APPLICATION NO 1208 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

K M RATHOD
versus
STATE OF GUJARAT & ANR

Appearance:
1. Special Civil Application No. 8414/90 & CA 1208/90
MR SHALIN MEHTA for MR GIRISH PATEL for Petitioner No. 1
MR SUD, A.G.P. for Respondent No. 1
NOTICE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

Date of decision: 28/08/2003

ORAL JUDGEMENT

1. Special Civil Application No.8414 of 1990 is jointly filed by both the petitioners - Peons, challenging their termination order dated 13.11.1990

(Annexure : I). The Division Bench of this Court (Coram : A.P.Ravani & D.G.Karia, JJ.) (as then they were), straightway admitted the petition on 5.12.1990 by issuing Rule and granted ad.interim relief in terms of Para : 16(i), and also made it clear that if the respondents want then they may file Affidavit in Reply as early as possible and thereafter they may request the Court for hearing as to interim relief.

2. Civil Application No.1208 of 1991 was filed by the State of Gujarat and others in above Special Civil Application No.8414 of 1990 for vacating the ad.interim relief, granted by the Division Bench of this Court in main Special Civil Application No.8414/90, on 5.12.1990. The said Civil Application was adjourned from time to time along with main writ petition and the ad.interim relief is continued till today. Thus, under the interim orders of the Court both the petitioners continued to remain in service as the termination order was stayed by the Division Bench of this Court.

3. Petitioner No.1 - Shri K.M.Rathod was appointed as Peon with effect from 9.8.1977, whereas the petitioner No.2 - Shri Ashok H.Raval was appointed from 1.5.1979 with the respondent State of Gujarat and with the artificial breaks of couple of days they were continued in service as Peon till 1980 and after 1980 they continued in service without any break in service. Inspite of long service of nearly 10 years they were not made permanent, therefore, they made representation for making them permanent. By an order dated 16.8.1988 both the petitioners were absorbed in service in Narmada Development Department (Annexure : A). Thereafter, both the petitioners made representation (Annexure : B collectively for considering their seniority and other rights. Instead of assigning their seniority and giving other benefits of service the respondent State decided to terminate their service by an order dated 10.7.1990 (Annexure : D). Therefore, they approached this Court by way of Special Civil Application No.5121 of 1990. The learned Single Judge of this Court granted ad.interim relief and restrained the respondents from terminating the services of the petitioners by order dated 16.7.1990 (Annexure : C). The said Special Civil Application No.5121 of 1990 was allowed by the learned Single Judge (A.P.Ravani,J.) on 16.8.1990 (Annexure : E). In pursuance of the Judgment and order passed by the learned Single judge of this Court on 16.8.1990 in Special Civil Application No.5121 of 1990, the respondents - State of Gujarat by its order dated 22.8.1990 (Annexure : F) withdrawn the order of termination dated 10.7.1990 passed

by it.

4. Thereafter, by letter dated 5.9.1990 the petitioners were served with Notice calling upon them to show cause as to why their services should not be terminated under Rule : 33(1)(a) of the Bombay Civil Service Rules (for short "B.C.S.R."). The petitioners filed Representation/reply dated 18.9.1990 (Annexures : G & H respectively) to the said Notice. However, the respondents - State of Gujarat passed the impugned order of termination dated 13.11.1990 (Annexure : I) with effect from 22.12.1990, under Rule : 33 of B.C.S.R. The said order was challenged by the petitioners by way of this petition in December 1990 and as stated earlier the Division Bench of this Court admitted the petition and has granted ad.interim relief in terms of Para : 16(i), whereby the impugned order of termination (Annexure:I) came to be stayed by virtue of the said order of interim relief petitioners have remained in service till today i.e. for a period of almost 13 years.

5. Learned A.G.P. Shri Sud, relying on an unreported Judgment of the Hon'ble Supreme Court in the case of STATE OF GUJARAT v/s. P.J.KUMPAVAT & ORS. passed in Special Leave to Appeal (Civil) No.2062-73/92, decided on 28.4.1992, submitted that since the tenure of the ministers at whose instance and on whose recommendation they were appointed has come to an end, therefore, the services of the petitioner must come to an end simultaneously. The copy of Judgment of the Hon'ble Supreme Court in P.J.Kumpavat (supra) was also annexed to the Civil Application No.1208 of 1991, filed in Special Civil Application No.8414 of 1990.

In view of the Judgment of the Hon'ble Supreme Court Shri Sud for the respondents submitted that the main writ petition be dismissed.

6. However, learned Counsel Shri Shalin Mehta, appearing for the petitioners, submitted that Rule : 33 of B.C.S.R. applies only to the temporary Government servant, whereas the petitioners were not the temporary Government Servants as they were absorbed in Government service for a period of more than 2 decades by now. Therefore, they have by now acquired the status of Semi-permanent employee in absence of any order making them permanent passed by the respondents - State. He also submitted that in case of P.J.Kumpavat (supra) they were appointed as Clerk Typist, which is a class : III post, whereas the petitioners were appointed on the Class : IV post, therefore, the Judgment of the Hon'ble

Supreme Court will have no application in the facts of the present case. He also submitted that Rule ; 33 of B.C.S.R. will have no application to the facts of this case and the impugned termination order passed by the respondents, under Rule : 33 of B.C.S.R., is liable to be quashed and set aside.

7. Having heard the learned Counsel for the parties and having carefully gone through the Judgment and order of the Hon'ble Supreme Court in P.J.Kumpavat's case (supra), it is clear that the petitioners' services could have been terminated under Rule : 33 B.C.S.R. Under the interim orders of the Court the petitioners have remained in service for more than 2 decades. If the termination order is upheld then they will be no where because they are now overage and they will not get service anywhere. It is unfortunate that though the respondents Government was asked to move the Court for expeditious hearing way back in 1990 and the Government moved Civil Application No.1208 of 1991 for vacating of interim relief in 1991, the State Government has not bothered either to get the interim relief vacated or get the petition decided at the earliest.

8. In case of BRIJ LAL v/s. BOARD OF REVENUE & ORS. reported in AIR 1994 SC 1128, the Hon'ble Supreme Court held that it would be travesty of justice to dispossess the appellant from the land which he is nourishing for over a period of two decades. It was a case where appellant Brij Lal was allotted the land in dispute in the year 1970 on temporary basis. In 1974 he applied for permanent allotment of the said land but the said application was rejected on the ground that from the photo affixed on the application form it appeared that he was a minor. The Appeal filed by him was dismissed. The Board of Revenue, Rajasthan, in exercise of the revisional powers remanded the case back to the original authority for fresh inquiry and decision in accordance with the Rajasthan Colonisation (Allotment and Sale of Government Land in Rajasthan Canal Colony Area) Rules, 1975, which had been enforced meanwhile. On remand the Assistant Colonisation Commissioner, by his order dated 19.1.1976, again rejected the application of the appellant on the ground that at the time when temporary allotment was made to him he was a minor. The Appellant Brij Lal had placed on record the birth date certificate from the Head Master of the Government Primary School, Khanansar and in addition he also filed a certificate of the doctor showing that on the date of temporary allotment of the land, he had attained majority. However, the Assistant Colonisation Commissioner rejected

both the documents and also the application for permanent allotment. The matter was carried before the High Court by way of petition, which was also dismissed by the High Court. Thereafter the matter was carried before the Hon'ble Supreme Court. Before the Hon'ble Supreme Court it was not disputed that appellant Brij Lal was cultivating the land and remained in possession of the land since 1970. Thus, he remained in possession of the land for more than 2 decades. Therefore, the Hon'ble Supreme Court held that it would be travesty of justice to dispossess the appellant from the land which he nourished for over a period of two decades. Accordingly, the Hon'ble Supreme Court allowed the Appeal with cost and set aside the Judgment of the Rajasthan High Court and also of the Authorities under the Rules and directed the authorities to make permanent allotment of the land in dispute in favour of the appellant.

9. Though the aforesaid Judgment of Brij Lal's case (supra) was delivered by the Hon'ble Supreme Court in case of allotment of land which was allotted on temporary basis, on the sole criteria that the appellant Brij Lal remained in possession and nourished the same for two decades the Hon'ble Supreme Court quashed and set aside the orders of the High Court and subordinate Authorities and directed the respondents to allot the land. Same anology can apply here in this case also though it is a service matter because the petitioners are in service since more than two decades.

10. In the instant case both the petitioners are coming from poor family. They have served the State Government for more than 2 decades. It may be that they remained in service under the interim orders of the Court but in any case they have served for more than 20 years. Under the circumstances, if the impugned order of termination is upheld then it would be travesty of justice, more particularly when both the petitioners were absorbed in service in 1988 in view of the fact that both of them were continuously discharging their duty from 7.6.1980 without any break. If they had not applied in 1988 for regularising their services then perhaps their services would not have been terminated.

11. Before parting, I must state that when their earlier petition i.e. Special Civil Application No.5121 of 1990 was allowed by the learned Single Judge of this Court then the respondents should have rested there. Unfortunately, it seems that they have misconstrued the observation made by the learned Single Judge of this Court in Para : 5 of his Judgment dated 16.8.1990

delivered in Special Civil Application No.5121 of 1990 and pass the impugned order of termination against the petitioner.

12. In view of the above discussion, this petition is allowed and the impugned order of termination (Annexure:I) dated 13.11.1990 is hereby quashed and set aside.

Rule is made absolute with costs.

Date : August 28, 2003 (B.J.Shethna, J.)

sas